

REMARKS

In the Office Action¹, the Examiner rejected claims 1-18, 26, 27, and 31-35 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,513,260 to Ryan ("*Ryan*") in view of U.S. Patent No. 5,629,980 to Stefik et al. ("*Stefik*").

Applicant has amended claims 1, 3-18, 26, 31, and 33-35, and has canceled claims 2, 27, and 32. Claims 1, 3-18, 26, 31, and 33-35 remain pending.

Applicant respectfully traverses the rejection and submits that a *prima facie* case of obviousness has not been established. A *prima facie* case of obviousness has not been established because, among other things, *Ryan* and *Stefik*, taken alone or in combination, fail to teach or suggest each and every element of Applicant's claims.

Claim 1 recites a data distribution system including, for example:

a reproducing apparatus . . .
a recording apparatus. . .
an examining means . . .
a controlling means . . .

. . .

wherein said examining means;

examines whether said content data is of a first type which is distributed in an encrypted state or of a second type which is distributed in an unencrypted state,

examines whether said recording medium is of a first type having a configuration enabling recorded data to be effectively read out by performing authentication processing or of a second type having no such configuration and enabling read out of the recorded data without authentication,

examines whether said reproducing apparatus is of a first type for reproducing after the authentication processing or of a second type for reproducing without that processing, and

examines whether said recording apparatus is of a first type for recording after the authentication processing or of a second type for recording without that processing.

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

(emphasis added). *Ryan* does not teach or suggest at least these elements.

Ryan discloses a CD player that looks for an authentication signature on the CD (col. 2, lines 65-67). If the authentication signature is present, the player will play the CD. If the authentication signature is not present, the player will not play the CD (col. 2, lines 32-44). The Examiner states that *Ryan* “discloses a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes)” (Office Action at page 4).

Even assuming that this assertion is correct, which Applicant does not concede, *Ryan* does not disclose the claimed “examining means” that examines “content data,” the “recording medium,” the “reproducing apparatus,” and the “recording apparatus,” as recited in claim 1. Therefore, *Ryan* does not teach or suggest the claimed combination of elements including an examining means that “examines whether said content data is of a first type which is distributed in an encrypted state or of a second type which is distributed in an unencrypted state, examines whether said recording medium is of a first type having a configuration enabling recorded data to be effectively read out by performing authentication processing or of a second type having no such configuration and enabling read out of the recorded data without authentication, examines whether said reproducing apparatus is of a first type for reproducing after the authentication processing or of a second type for reproducing without that processing, and examines whether said recording apparatus is of a first type for recording after the authentication processing or of a second type for recording without that processing,” as recited in claim 1.

The Examiner correctly states that *Ryan* does not disclose “wherein said usage space information indicates system information of said recording apparatus and said reproducing apparatus, ownership right information of said content data, format information of said content data, and distributing profit information obtained by the distribution of said content data,” as recited in claim 1 (Office Action at page 3). The Examiner relies on *Stefik* to teach these elements (Office Action at pages 3-4).

Even assuming that this assertion is correct, which Applicant does not concede, *Stefik* does not cure the deficiencies of *Ryan* discussed above. *Stefik* discloses a “system for controlling use and distribution of digital works” (col. 3, lines 51-52). The system “allows the owner of a digital work to attach usage rights to the work” (col. 3, lines 56-57). The Examiner cites Fig. 15 and 16 of *Stefik* to “show reproduction and recording means with system control and encryption/authentication” (Office Action at page 4).

Fig. 15 lists usage rights grammar, and Fig. 16 depicts the “registration transaction between two repositories” (col. 27, lines 43-44). In Fig. 16, repository-1 “generates an encrypted registration identifier,” “generates a message,” and “transmits the registration message to repository-2” (col. 27, lines 49-67). Repository-2 “determines if it has the needed public key,” and, if it does, “the identification certificate is decrypted” (col. 28, lines 6-7). The registration identifier is extracted, saved, and checked against a “hotlist” (col. 28, lines 8-11). The registration identification is verified, a performance message is transmitted to repository-1, decrypted, and, if the repositories are correct, a “nonce” is transmitted from repository-1 to repository-2 and compared (col. 28, lines 32-63).

Stefik discloses generating an “encryption registration identifier.” However, *Stefik* does not disclose the claimed “examining means” that examines “content data,” the “recording medium,” the “reproducing apparatus,” and the “recording apparatus,” as recited in claim 1. Therefore, *Stefik* does not teach or suggest the claimed combination of elements including an examining means that “examines whether said content data is of a first type which is distributed in an encrypted state or of a second type which is distributed in an unencrypted state, examines whether said recording medium is of a first type having a configuration enabling recorded data to be effectively read out by performing authentication processing or of a second type having no such configuration and enabling read out of the recorded data without authentication, examines whether said reproducing apparatus is of a first type for reproducing after the authentication processing or of a second type for reproducing without that processing, and examines whether said recording apparatus is of a first type for recording after the authentication processing or of a second type for recording without that processing,” as recited in claim 1.

Accordingly, *Ryan* and *Stefik* fail to establish a *prima facie* case of obviousness with respect to claim 1, at least because the references fail to teach each and every element of the claim. Claims 3-18 depend from claim 1 and are thus also allowable over *Ryan* and *Stefik*, for at least the same reasons as claim 1.

Independent claims 27 and 31, while of different scope, recite elements similar to those of claim 1 and are thus also allowable over *Ryan* and *Stefik* for reasons similar to that discussed above for claim 1. Claims 33-35 are also allowable at least due to their dependence from independent claim 31.

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of the application and withdrawal of the rejection. Pending claims 1, 3-18, 26, 31, and 33-35 are in condition for allowance, and Applicant requests a favorable action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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